

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-33 ✓

In the Matter of

Amendment of Section 73.202(b). RM-8160
Table of Allotments.
FM Broadcast Stations.
(Oakhurst and Firebaugh, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 8, 1993;

Released: March 2, 1993

Comment Date: April 22, 1993

Reply Comment Date: May 7, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein the petition for rule making filed on behalf of California Sierra Corporation ("petitioner"), licensee of Station KAAT(FM), Channel 296A, Oakhurst, California, seeking the substitution of Channel 276A for Channel 296A and modification of its license accordingly. In order to accommodate its request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 234A for vacant Channel 276A at Firebaugh, California.¹ Petitioner stated its intention to apply for Channel 276A if it is allotted to Oakhurst.

2. In support of the proposal, petitioner states that while it is presently precluded from upgrading on its present channel as Station KAAT(FM) would be short-spaced to Station KMMM(FM), Channel 297A, Madera, California, the channel substitutions will enable Station KAAT(FM) to increase its effective radiated power to 6 kilowatts on Channel 276A at Oakhurst. Therefore, we believe the public interest would be served by the proposal since it will enable Station KAAT(FM) to expand its coverage area.

3. Channel 276A can be allotted to Oakhurst consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's licensed site.² Additionally, Channel 234A can be substituted for Channel 276A at Firebaugh, California, without the imposition of a site restriction.³

4. We are also serving a copy of this Notice on the applicant for Channel 276A at Firebaugh. In the event Central Valley's application is reinstated, and this proceeding is finalized prior to the issuance of a permit for Channel 276A at Firebaugh, the applicant may amend its

application accordingly. Such amendment may be accomplished without the loss of cut off protection. *See Salamanca, New York and Bradford, Pennsylvania*, 50 Fed. Reg. 26208 (1985) and *Sanibel, Florida*, 50 Fed. Reg. 32706 (1985).

5. Accordingly, we seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Firebaugh, California	276A	234A
Oakhurst, California	296A	276A

6. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this Notice by Certified Mail, Return Receipt Requested, to the applicant for Channel 276A at Firebaugh, California, as follows: Central Valley Educational Services, Inc., 12550 Brookhurst Street, Garden Grove, California 92640.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before April 22, 1993, and reply comments on or before May 7, 1993, and "are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

A. Wray Fitch III, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is

¹ Although Channel 276A at Firebaugh is vacant, a petition for reconsideration has been filed by Central Valley Educational Services, Inc. ("Central Valley") seeking reinstatement of its application for Channel 276A (File No. BPED-881017MD).

² Coordinates for Channel 276A at Oakhurst are 37-25-08 and

119-44-04.

³ Coordinates for Channel 234A at Firebaugh are 36-51-30 and 120-27-12. Channel 234A may also be used at the site proposed in Central Valley's application at coordinates 36-47-30 and 120-30-00.

no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.